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Tenaga Nasional Bhd v Majlis Daerah Segamat

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01(A)-484–07 OF 2018
BADARIAH SAHAMID, SURAYA OTHMAN AND NOR BEE ARIFFIN JJCA
22 FEBRUARY 2021

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Civil Procedure — Preliminary objection — Mode of application — Whether the specific procedure under s 145(1) of the Local Government Act 1976 prevailed over O 53 of the Rules of Court 2012

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Local Government — Rates — Appeal — Review of decision in assessment of improved value and rates levied on the pylons of the transmission lines — Appellant was not the owner of the land — Whether failure to state status of land barred the respondent from invoking s 163 of the Local Government Act 1976 to mount its claim — Local Government Act s 145(1)

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The appellant (Tenaga Nasional Bhd), owned and operated pylons that supported high voltage transmission lines situated within the jurisdiction of the respondent (Majlis Daerah Segamat). On 24 November 2014, the appellant received a notice dated 13 November 2014 from the respondent informing them that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s 141 of the Local Government Act 1976 ('the Act'). Attached to the notice was a list setting out particulars and revised improved value of 211 holdings all located within the respondent's area of jurisdiction. It listed 198 substations, four main intake stations (PMU), seven high tension transmission lines, an office building, and a store building. By its letter dated 25 November 2014, the appellant lodged its objections against the respondent's assessment of improved value and rates levied on all the 211 holdings. On 12 October 2015, the appellant received a notice dated 17 August 2015 from the respondent ('the respondent's first decision') informing that the 'Mesyuarat Penuh Majlis Daerah Segamat' had considered the appellant's objections against the assessment of the improved value and rates levied on part of the appellant's holdings and had agreed to reduce the assessment of improved value and rates levied earlier in its notice dated 13 November 2014. By its letter dated 28 October 2015, the appellant requested the respondent to reconsider and review the respondent's first decision in relation to the pylons on the ground that the appellant was not the owner of the lands where the high voltage transmission lines and pylons were situated. Consequently, payment of rates could not be levied under the Act on

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the occupier. The appellant only had a right of way on the said lands which was acquired pursuant to s 11 of the Electricity Supply Act 1990. The appellant then received a notice dated 16 May 2017 from the respondent stating that after considering the appellant's objections, the 'Mesyuarat Penuh Majlis Daerah Segamat' had decided to reject the objections on the ground that the pylons were defined as 'building' under the Act and therefore were subjected to an assessment of improved value and payment of rates under the Act ('the respondent's decision'). Subsequent thereto, the appellant filed leave to commence judicial review against the respondent's decision under O 53 r 3(6) of the Rules of Court 2012 ('the ROC 2012'). Leave was granted by the High Court on 2 November 2017 to commence judicial review proceedings against the respondent's decision. The appellant filed its substantive application for judicial review on 7 November 2017 which concerned the respondent's decision in assessment of improved value and rates levied on the pylons of the seven high tension transmission lines. At the hearing of the judicial review application, the respondent raised a preliminary objection arguing that, instead of commencing judicial review proceedings under O 53 of the ROC 2012, the appellant should have filed an appeal to the High Court under s 145(1) of the Act within the 14 days' timeline prescribed by s 145(1) and (2) upon receiving the respondent's decision. On 26 June 2018, the High Court upheld the respondent's preliminary objection and dismissed the judicial review application. Hence, the present appeal by the appellant.

Held, allowing appeal with costs:

(1) Section 163(1) of the Act expressly sets out that in the case of buildings situated on State land or on land reserved for a public purpose, the local authority may impose the rates referred to in s 127 on any such buildings, and the occupiers of such buildings shall be liable to pay the said rates. Section 163(2) of the Act states that the provisions of Act with regards to rates shall apply to any rate imposed under sub-s (1) except that in the application of the provisions, references to a 'holding' shall be deemed to be references to a 'building', and references to the 'owner' of a holding shall be deemed to be references to the 'occupier' of a building (see para 22).

(2) Section 163 of the Act is applicable for rates to be imposed by the local authority if the 'building' is situated on state or reserved land. In the present appeal, the list attached to the respondent's notice dated 13 November 2014 informing the appellant that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s 141 of the Act did not state that the pylons were situated on the state land or on the reserved land. It merely set out that the pylons were located on hundreds of locations where the status of the lands were obviously unknown/privately-owned lands within the area administered by the respondent. Therefore, without stating the status of land, whether it was

State or reserved land, the respondent could not use s 163 of the Act to mount its claim. The High Court judge had, therefore, erred in dismissing the judicial review application on the preliminary objection (see paras 23–24).

[Bahasa Malaysia summary

Perayu (Tenaga Nasional Bhd), memiliki dan mengendalikan tiang yang menyokong saluran transmisi voltan tinggi yang terletak di dalam bidang kuasa responden (Majlis Daerah Segamat). Pada 24 November 2014, perayu telah menerima notis bertarikh 13 November 2014 dari responden yang memaklumkan kepada mereka bahawa responden telah menyiapkan senarai nilaian baru berkenaan pegangan perayu menurut s 141 Akta Kerajaan Tempatan 1976 ('Akta tersebut'). Dilampirkan bersekali dengan notis tersebut adalah senarai yang menyatakan butir-butir dan semakan nilai tambah baik 211 pegangan yang kesemuanya terletak di dalam bidang kuasa responden. Ia menyenaraikan 198 pencawang kecil, empat stesen masuk utama (PMU), tujuh saluran transmisi tegangan tinggi, bangunan pejabat, dan bangunan stor. Melalui suratnya bertarikh 25 November 2014, perayu mengemukakan bantahannya terhadap penilaian responden mengenai nilai tambah baik dan kadar yang dikenakan terhadap semua 211 pegangan. Pada 12 Oktober 2015, perayu menerima notis bertarikh 17 Ogos 2015 dari responden ('keputusan pertama responden') yang memaklumkan bahawa 'Mesyuarat Penuh Majlis Daerah Segamat' telah mempertimbangkan bantahan perayu terhadap penaksiran nilai tambah baik dan kadar yang dikenakan pada sebahagian daripada pegangan perayu dan telah bersetuju untuk mengurangkan penaksiran nilai tambah baik dan kadar yang dikenakan sebelumnya melalui notisnya bertarikh 13 November 2014. Melalui suratnya bertarikh 28 Oktober 2015, perayu meminta responden mempertimbangkan dan menyemak semula keputusan pertama responden berhubung dengan tiang atas alasan bahawa perayu bukan pemilik tanah di mana talian transmisi dan tiang voltan tinggi berada. Akibatnya, pembayaran kadar tidak dapat dikenakan berdasarkan Akta tersebut kepada penghuni. Perayu hanya mempunyai hak laluan atas tanah tersebut yang diperoleh berdasarkan s 11 Akta Bekalan Elektrik 1990. Perayu kemudiannya menerima notis bertarikh 16 Mei 2017 dari responden yang menyatakan bahawa setelah mempertimbangkan bantahan perayu, 'Mesyuarat Penuh Majlis Daerah Segamat' telah memutuskan untuk menolak bantahan tersebut dengan alasan tiang-tiang tersebut didefinisikan sebagai 'bangunan' di bawah Akta tersebut dan oleh itu adalah tertakluk kepada penaksiran nilai tambah dan pembayaran kadar di bawah Akta tersebut ('keputusan responden'). Selepas daripada itu, perayu memfailkan kebenaran untuk memulakan semakan kehakiman terhadap keputusan responden di bawah A 53 k 3(6) Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Kebenaran telah dibenarkan oleh Mahkamah Tinggi pada 2 November 2017 untuk memulakan prosiding semakan kehakiman terhadap keputusan responden. Perayu mengemukakan permohonan substantifnya untuk semakan kehakiman pada

7 November 2017 yang berkaitan dengan keputusan responden dalam penaksiran nilai tambah dan kadar yang dikenakan pada tiang tujuh saluran transmisi tegangan tinggi. Semasa pendengaran permohonan semakan kehakiman, responden mengemukakan bantahan awal dengan alasan bahawa, daripada memulakan prosiding semakan kehakiman di bawah A 53 KKM 2012, perayu seharusnya memfailkan rayuan ke Mahkamah Tinggi berdasarkan s 145(1) Akta tersebut dalam jangka masa 14 hari seperti ditetapkan oleh s 145(1) dan (2) setelah menerima keputusan responden. Pada 26 Jun 2018, Mahkamah Tinggi membenarkan bantahan awal responden dan menolak permohonan semakan kehakiman. Oleh itu, rayuan semasa oleh perayu.

Diputuskan, membenarkan rayuan dengan kos:

(1) Seksyen 163(1) Akta tersebut secara tegas menetapkan bahawa dalam hal bangunan yang terletak di atas tanah Negeri atau di tanah yang dirizabkan untuk maksud awam, pihak berkuasa tempatan dapat mengenakan kadar yang dirujuk dalam s 127 pada setiap bangunan tersebut, dan penghuni bangunan tersebut harus bertanggungjawab membayar kadar tersebut. Seksyen 163(2) Akta tersebut menyatakan bahawa peruntukan Akta berkenaan dengan kadar harus terpakai untuk setiap kadar yang dikenakan di bawah sub-s (1) kecuali dalam penggunaan peruntukan tersebut, rujukan pada 'pegangan' haruslah dianggap sebagai merujuk kepada 'bangunan', dan rujukan kepada 'pemunya' sebuah pegangan haruslah dianggap sebagai rujukan kepada 'penduduk' sesebuah bangunan (lihat perenggan 22).

(2) Seksyen 163 dari Akta tersebut adalah terpakai untuk kadar yang akan dikenakan oleh pihak berkuasa tempatan sekiranya 'bangunan' tersebut terletak di atas tanah kerajaan Negeri atau tanah rizab. Dalam rayuan semasa, senarai yang dilampirkan pada notis responden bertarikh 13 November 2014 yang memaklumkan perayu bahawa responden telah menyiapkan senarai nilaian baru mengenai pegangan perayu menurut s 141 Akta tersebut tidak menyatakan bahawa tiang tersebut berada di atas tanah Kerajaan Negeri atau tanah rizab. Ia hanya menyatakan bahawa tiang tersebut berada di beratus lokasi di mana status tanah tersebut jelas tidak diketahui/tanah milik persendirian di dalam kawasan yang ditadbir oleh responden. Oleh itu, tanpa menyatakan status tanah, sama ada tanah Kerajaan Negeri atau tanah rizab, responden tidak dapat menggunapakai s 163 Akta tersebut untuk mengukuhkan tuntutannya. Oleh itu, hakim Mahkamah Tinggi telah terkhilaf dalam menolak permohonan semakan kehakiman atas bantahan awal (lihat perenggan 23–24).]

Cases referred to

Loke Wan Yat Realty Sdn Bhd v Datuk Bandar Kuala Lumpur [2015] MLJU 631; [2016] 1 CLJ 107, HC (refd)
M-10 Builders Sdn Bhd v Tunas Selatan Consortium Sdn Bhd [2014] MLJU 1847, HC (refd)
Segamat Parking Services Sdn Bhd v Majlis Daerah Segamat Utara & Another Case [2009] 1 CLJ 942; [2008] 3 MLRH 348, HC (refd)

Legislation referred to

Electricity Supply Act 1990 s 11
Local Government Act 1976 ss 2, 127, 141, 142(1)(a), (1)(b), (1)(c), (1)(d), (1)(e), 145, 145(1), (2), 163, 163(1), (2)
Rules of Court 2012 O 53, O 53 r 3(6)

Appeal from: Application for Judicial Review No JB-25–04–08 of 2017 (High Court, Muar)

Gurmel Singh (Kenth Partnership) for the appellant.
Mohd Radzi bin Yatiman (Rahim & Lawrnee) for the respondent.

Suraya Othman JCA (delivering judgment of the court):

INTRODUCTION

[1] This is the appellant's appeal against the decision of the learned High Court judge dated 26 June 2018 in dismissing the appellant's application for judicial review on a preliminary objection raised by the respondent. By the judicial review application, the appellant sought to review the respondent's decision in respect of assessment of improved value and rates levied on the appellant's pylons within the respondent's area of jurisdiction ('pylons').

[2] We heard the appeal and had unanimously allowed the same. The case was then remitted to the High Court to be heard on merit. We now give our reasons.

THE BACKGROUNDS FACTS

[3] The appellant ('Tenaga Nasional Bhd') is a public listed company which supplies electricity. The respondent ('Majlis Daerah Segamat') is a local authority within the meaning of the Local Government Act 1976 ('the Act'). The appellant owned and operated the pylons that support high voltage transmission lines situated within the jurisdiction of the respondent. On 24 November 2014, the appellant received a notice dated 13 November 2014 from the respondent informing them that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s 141 of the Act. Attached

to the notice was a list setting out particulars and revised improved value of 211 holdings all located within the respondent's area of jurisdiction. It listed 198 substations, four main intake stations (Pencawang Masuk Utama (PMU)), seven high tension transmission lines, an office building and a store building.

[4] By its letter dated 25 November 2014, the appellant lodged its objections against the respondent's assessment of improved value and rates levied on all the 211 holdings.

[5] On 12 October 2015, the appellant received a notice dated *17 August 2015* from the respondent ('the respondent's first decision') informing that the 'Mesyuarat Penuh Majlis Daerah Segamat' had considered the appellant's objections against the assessment of the improved value and rates levied on part of the appellant's holdings and had agreed to reduce the assessment of improved value and rates levied earlier in its notice dated 13 November 2014.

[6] By its letter dated 28 October 2015, the appellant requested the respondent to reconsider and review the respondent's first decision in relation to the pylons on the ground that the appellant is not the owner of the lands where the high voltage transmission lines and pylons are situated. Consequently, payment of rates cannot be levied under the Act on the occupier. The appellant has only a right of way on the said lands which is acquired pursuant to s 11 of the Electricity Supply Act 1990.

[7] The appellant was invited by the respondent on 20 February 2017 to hear its objections on the assessment of the improved value and rates levied by the respondent on the pylons together with the appellant's objections on the assessment of improved value and rates levied on four main intake stations, an office building and a store building. With regards to the pylons, the appellant had again reiterated at the meeting that the appellant is not the owner of the lands where the transmission lines and pylons are situated and therefore rates cannot be levied against the appellant under the Act.

[8] On 23 May 2017, the appellant received a notice dated *16 May 2017* from the respondent stating that after considering the appellant's objections, the 'Mesyuarat Penuh Majlis Daerah Segamat' had decided to reject the objections on the ground that the pylons are defined as 'building' under the Act and therefore are subjected to assessment of improved value and payment of rates under the Act ('the respondent's decision').

[9] On 22 August 2017, the appellant filed its application for leave to commence judicial review against the respondent's decision under O 53 r 3(6) of the Rules of Court 2012 ('the ROC 2012'). Leave was granted by the High

Court on 2 November 2017 to commence judicial review proceedings against the respondent's decision.

[10] The appellant filed its substantive application for judicial review on 7 November 2017. The judicial review is only concerned with the respondent's decision in assessment of improved value and rates levied on the pylons of the seven high tension transmission lines. At the hearing of the judicial review application, the respondent raised a preliminary objection. The respondent argued that, instead of commencing judicial review proceedings under O 53 of the ROC 2012, the appellant should have filed an appeal to the High Court under s 145(1) of the Act within the 14 days timeline prescribed by s 145(1) and (2) upon receiving the respondent's decision.

HIGH COURT DECISION

[11] On 26 June 2018, the High Court upheld the respondent's preliminary objection and dismissed the judicial review application. Hence, the appellant appealed to this court.

[12] The learned High Court judge held that the appellant ought to have filed an appeal to the High Court by way of a notice of motion under s 145(1) and (2) of the Act instead of a judicial review application under O 53 of the ROC 2012 to quash the respondent's decision. The learned High Court judge was of the view that s 145(1) and (2) of the Act are specific provisions providing for appeal to the High Court against any decision of a local authority concerning rates. The procedural rules under the said section should be preferred when compared to O 53 of the ROC 2012 which provides for procedural rules of general application for judicial review of any administrative decision in relation to the exercise of public duty.

[13] The learned High Court judge further held that the timeline to file the appellant's appeal under s 145 of the Act began from 12 October 2015 when the appellant received the notice dated 17 August 2015 from the respondent of the decision made by its 'Mesyuarat Penuh Majlis Daerah Segamat' in relation to the assessment of the improved value and rates levied on the pylons ('the respondent's first decision').

THE APPEAL

The appellant's submission

[14] In arguing the preliminary objection raised, the learned counsel for the appellant contended that for s 145 of the Act to be applicable, the appellant's objections must fall within the ambit of any of the specific grounds expressed

in s 142(1)(a)–(e) of the Act. The appellant submitted that it's objection in its letter dated 28 October 2015 was premised on the basic ground that the appellant is not the owner of the lands where the transmission lines and pylons are situated and therefore payment of rates cannot be levied under the Act on the appellant who is a mere occupier. The appellant has only a right of way over the said lands which was acquired pursuant to the Electricity Supply Act 1990. Thus, the appellant's objection in its letter dated 28 October 2015 does not fall within the ambit of any of the grounds enumerated in s 142(1)(a)–(e) and therefore, cannot be encapsulated by s 145(1) and (2) of the Act.

[15] The appellant further submitted that the learned High Court judge had misapplied the Latin maxim of *generalia specialibus non derogant* in this case. Apart from mentioning in general terms that the appellant ought to have proceeded to file an appeal under s 145, the learned High Court judge has not identified any of the grounds in s 142(a)–(e) which is specifically applicable to TNB's objection.

[16] The appellant argued that the learned High Court judge has failed to consider that the subject matter of the judicial review was the 'respondent's decision' and not the 'first respondent's decision' because the first respondent's decision dated 17 August 2015 had been effectively superseded by the respondent's decision dated 16 May 2017. The appellant further submitted that it's judicial review application against the respondent's decision has been duly filed within the three months timeline on 22 August 2017 as prescribed under O 53 r 3(6) of the ROC 2012.

The respondent's submission

[17] The respondent on the other hand submitted that a judicial review application cannot be filed on the tax value issues under the Local Government Act 1976. The respondent relied on the case of *Loke Wan Yat Realty Sdn Bhd v Datuk Bandar Kuala Lumpur* [2015] MLJU 631; [2016] 1 CLJ 107. The respondent further submitted that the appellant has to challenge the decision of the respondent based on the provisions of a specific law under the Local Government Act 1976 ie by filing an appeal under s 145 of the Act. The respondent argued that if there are special provisions under s 145 of the Act, then it must be followed, and general provisions under O 53 of the ROC 2012 is not applicable. The respondent cited the case of *M-10 Builders Sdn Bhd v Tunas Selatan Consortium Sdn Bhd* [2014] MLJU 1847 and *Segamat Parking Services Sdn Bhd v Majlis Daerah Segamat Utara & Another Case* [2009] 1 CLJ 942; [2008] 3 MLRH 348 in support of its contention.

OUR DECISION

[18] We heard the appeal on 7 May 2019 and found merits in the appellant's appeal. We allowed the appeal and set aside the decision of the learned High Court judge. The case was remitted to the High Court to be heard on merit. We now give our reasons for doing so.

[19] The appellant's objection is premised on the basic ground that the appellant is not the owner of the lands where the high voltage transmission lines and pylons are situated and therefore payment of rates cannot be levied under the Act as the appellant is a mere occupier.

[20] Section 2 of the Act defined the word 'holding' as follows:

> any land, with or without buildings thereon, which is held under a separate document of title and in the case of subdivided buildings, the common property and any parcel thereof and, in the case of Penang and Malacca, 'holding' includes messuages, buildings, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority.

[21] Section 163(1) of the Act provides a provision for rating buildings on state or reserved land which reads as follows:

> 163 *Provision for rating buildings on State or reserved land*
>
> (1) In the case of *buildings situated on State land or on land reserved* for a public purpose and not occupied by the Federal or State Governments the local authority, with the approval of the *State Authority, may impose the rates referred to in section 127* upon the annual value or improved value of all or any of such buildings, and the occupiers of such buildings shall be liable to pay the said rates.
>
> (2) The provisions of this Part shall apply to any rate imposed under subsection (1) except that in the application thereof references to a 'holding' shall be deemed to be references to a 'building', and references to the 'owner' of a holding shall be deemed to be references to the 'occupier' of a building.

[22] Section 163(1) of the Act expressly sets out that in the case of *buildings situated on State land or on land reserved* for a public purpose, *the local authority may impose the rates referred to in* s 127 on any such buildings, and the occupiers of such buildings shall be liable to pay the said rates. Section 163(2) of the Act states that the provisions of Act with regards to rates shall apply to any rate imposed under sub-s (1) except that in the application of the provisions, references to a 'holding' shall be deemed to be references to a 'building', and references to the 'owner' of a holding shall be deemed to be references to the 'occupier' of a building.

[23] Section 163 is applicable for rates to be imposed by the local authority if the 'building' is situated on state or reserved land. In our appeal, the list attached to the respondent's notice dated 13 November 2014 informing the appellant that the respondent had prepared a new valuation list of the appellant's holdings pursuant to s 141 of the Act *did not state that the pylons are situated on the state land or on the reserved land*. It merely sets out that the pylons are located on hundreds of locations where the *status of the lands were obviously unknown/privately owned lands within the area administered by the respondent*. Therefore without stating the status of land, whether it is state or reserved land, the respondent cannot use s 163 of the Act to mount its claim.

CONCLUSION

[24] For the reasons enumerated above and after considering the appeal records and submission of parties, we were unanimous in our view that the learned judge had erred in dismissing the judicial review application on the preliminary objection. We therefore allowed the appeal with costs of RM5,000 subject to the payment of allocator fees. We set aside the order of the High Court dated 26 June 2018 and the matter is remitted to the High Court for the substantive hearing of the judicial review application.

Appeal allowed, case remitted to the High Court to be heard on merits.

Reported by K Selvaraju